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Via ECFS

Ex Parte Memorandum

October 9, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: Universal Service Contribution Methodology, WC Docket No. 06-122
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

On behalf of the American Association of Paging Carriers (AAPC), this responds to the *ex parte* notice filed in the above-referenced proceedings on September 23, 2008, jointly by AT&T Services, Inc. and by Verizon (the “AT&T/VZ Notice”). The purpose of the AT&T/VZ Notice was to support the claim that under their proposed Direct USF Contribution Methodology outlined in a previous joint submission on September 11, 2008 (commonly referred to as their “Numbers” proposal for contributing to the Universal Service Fund), “the majority of consumers would pay less in monthly USF fees . . . than they do today.”

The claim and underlying analysis are, at best, disingenuous, superficial and highly misleading. In fact, their Numbers proposal is simply a device for effecting a massive and unjustified off-loading of USF contribution obligations from cellular/PCS subscribers and large business wireline subscribers onto the backs of low-usage business and residential wireline customers. Such a proposal represents a huge step in precisely the wrong direction, particularly in the case of cellular/PCS subscribers, and is utterly at odds with the Commission’s public interest objectives in its recent USF decisions such as increasing the two-way wireless “safe harbor” interstate allocation for bundled services from 28.5% to 37.1% and “capping” wireless ETC Universal Service Fund disbursements. Accordingly, the AT&T/VZ Numbers proposal should be summarily rejected by the Commission.

What the AT&T/VZ Notice fails to make clear is that their Numbers proposal would result in a massive reduction of contributions to USF by what they refer to as “Wireless Telephony” subscribers (*i.e.*, cellular/PCS subscribers). The Notice then overwhelmingly -- but rather disingenuously -- allocates the wireless decrease to the “consumer” side of the ledger, thus making it

appear overall as though the typical telephone “consumer” will benefit financially as a result of their Numbers proposal.

By way of illustration, the most basic individual wireless voice plan offered by AT&T and VZ is \$40 per month, which uses one telephone number. Using the current “safe harbor” allocation of 37.1%, interstate revenues under this plan thus are \$14.84 per month, making a USF contribution due (at the current 11.4%) of \$1.69 per month. By contrast, AT&T & VZ estimate that under their Numbers proposal, the monthly USF contribution for this wireless subscriber would be reduced to \$1.07 (with the family plan adjustment), **a 37% reduction in USF contributions for wireless telephony subscribers at the same time wireless ETC distributions threaten to “bust” the USF budget.**

This massive offloading of USF contribution obligations is even greater as a general rule under the more expensive wireless telephony rate plans. For example, VZ offers a basic two-line (two-number) family plan for \$70 per month. Again, using the “safe harbor” allocation of 37.1%, interstate revenues under this plan thus are \$25.97, making a USF contribution due (at 11.4%) of \$2.96 per month. However, under the AT&T/VZ Numbers proposal, the estimated contribution would be only \$1.61 per month (150% of the single number assessment of \$1.07), **a 46% reduction in USF contributions for wireless telephony subscribers at the same time wireless ETC distributions threaten to “bust” the USF budget.** Similarly, AT&T’s basic two-line (two-number) family plan at \$60 per month would receive a 37% reduction, the same as their basic individual wireless telephony subscriber, reducing a current \$2.54 per month USF contribution obligation (interstate revenues of \$22.26 x 11.4%) to the same \$1.61 contribution as under VZ’s basic family plan.

Eliminating the family plan adjustment lessens the reduction somewhat overall, although individual wireless telephony subscribers would still reduce their USF contribution obligation from \$1.69 currently to \$1.01 per month, a 40% reduction compared to a 37% reduction with the family plan adjustment.

This offloading of wireless telephony USF contribution obligations is also demonstrated by the AT&T/VZ Notice’s own data. Table 1 of the Notice states that interstate Wireless Telephone end user revenues for 2006 were \$26,857,000. The Commission should note that the wireless “safe harbor” interstate allocation was only 28.5% for the first three quarters of 2006, so the interstate revenue reflected in Table 1 is actually understated for a current analysis. Nonetheless, even using Table 1’s data without adjustment, at the current USF contribution factor of 11.4%, the wireless telephony USF contribution obligation for 2006 would be \$3,061,698,000. By contrast, using the family plan adjustment set forth in the Notice, there were 203,816,317 net Wireless Telephony numbers at year end 2007 according to the Notice’s Table 2 (260,143,000 less 21,305,712 adjustment for prepaid wireless and 35,020,917 adjustment for the family plan). At \$1.07 per number times 12 months, the net 203,816,317 wireless telephony numbers would yield a USF contribution obligation of only \$2,617,001,510, **a reduction of \$445 million for wireless telephony subscribers at the same time wireless ETC distributions threaten to “bust” the USF budget.**

The Commission also should note that actual extent of USF contribution offloading is much greater than reflected in the above data in the Notice. As noted above, the 2006 interstate revenues included only one quarter at the current “safe harbor” of 37.1%; the first three quarters used the substantially lower 28.5% wireless “safe harbor”. Additionally, of course, 2007 wireless telephony revenues in general were greater than in 2006, again resulting in understating the actual USF contribution obligation in 2007 under the current system, and therefore understating the true extent of the offloading of that contribution obligation by wireless telephony subscribers under the AT&T/VZ Numbers proposal.

Eliminating the family plan adjustment does not eliminate the wireless offloading. Adding back the 35,020,917 family plan adjustment numbers results in net wireless telephony numbers of 225,122,029 which, when multiplied by \$1.01 times 12 months results in a wireless telephony USF contribution obligation of \$2,728,478,991. This is still a \$333 million reduction compared to a USF contribution obligation of \$3,061,698,000 using Table 1 data, as explained above.

Indeed, Table 4 of the Notice itself also demonstrates the offloading by wireless telephony and large business wireline subscribers. Table 4 shows a reduction in USF contribution obligations under the AT&T/VZ Numbers proposal for *all* categories of wireless telephony subscribers and for *all* categories of wireline subscribers *except* zero and low usage subscribers. Zero and low usage wireline subscribers, whether business or residential, would experience increases in their USF contribution obligations, according to Table 4, ranging from 4% (Line 2, Column 6) to as high as 57% (Line 1, Column 5).

In 2006, the Commission raised the “safe harbor” interstate allocation for wireless telephony from 28.5% to 37.1%, at least in part because the Commission determined that wireless telephony subscribers were not shouldering a fair portion of the USF contribution load. Adopting the AT&T/VZ Numbers proposal would effectively reverse the 2006 decision without the necessary findings and conclusions that their proportion of the obligation is now too high under current rules, and would do so at the same time increased USF payments to wireless telephony carriers continue to strain the USF budget and cause upward pressure on the quarterly USF contribution factor.

Nor is the massive and unjustified offloading of wireless telephony USF contribution obligations the only flaw in the AT&T/VZ Proposal. Numbers used by paging carriers, which are classified overwhelmingly as business numbers (*see* Table 2 of the Notice), would be assessed the full, per number contribution obligation of \$1.07 and \$1.01, respectively, depending upon whether an adjustment is made for wireless telephony family plans. By contrast, under the current methodology, even using the unrealistically high paging “safe harbor” interstate allocation of 12%,¹ the

¹ AAPC has previously pointed out that the 12% paging “safe harbor” is unrealistically high, having been based on data submitted by nationwide carriers that largely have disappeared, and that a more accurate safe harbor would be the 1% used for analog SMRS licensees. *See, e.g.,* Comments of American Association of Paging Carriers on Further Notice of Proposed Rulemaking, *In the Matter of Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45, *et al.*, April 22, 2002, at p. 5 (the “FNPR Comments”).

typical monthly paging fee of \$8.00 per month² results in a USF contribution obligation of \$0.11 per month per pager at the current contribution factor.³ That is, while wireless telephony subscribers would be offloading their USF contribution obligations under the AT&T/VZ Proposal, paging carriers would be saddled with a *crippling increase of more than 800%* in their USF contribution obligations. AAPC has noted previously that part of the statutory standard that USF contribution obligations be “equitable and nondiscriminatory” is the notion of competitive neutrality.⁴ Clearly, as applied to paging carriers, the AT&T/VZ Numbers proposal utterly fails to comply with the statutory requirements, a particularly egregious failure in light of the fact that paging carriers do not and cannot – unlike wireless telephony service providers – receive any USF disbursements to support paging services in high cost areas.

For all of the foregoing reasons, the American Association of Paging Carriers respectfully requests that the Commission categorically reject the AT&T/VZ Numbers proposal at the threshold.

Respectfully submitted,

AMERICAN ASSOCIATION OF
PAGING CARRIERS

By: 
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Its Attorney

² This estimate has been used by the Commission. See *In the Matter of Federal-State Joint Board on Universal Service, et al. (Further Notice of Proposed Rulemaking and Report and Order)*, FCC 02-43, released February 26, 2002 and published at 67 Fed. Reg. 11268 (March 13, 2002), at ¶59 & n. 145. Due to the intense competition within the paging industry and from the wireless telephony industry, the average monthly paging revenue per unit has changed little since then.

³ \$8.00 x 12% “safe harbor” yields an interstate revenue allocation of \$0.96. \$0.96 x 11.4% current USF contribution factor yields a contribution obligation of \$0.11 per month per pager.

⁴ AAPC FNPR Comments, *supra*, pp. 8-9. See also, e.g., *In the Matter of Universal Service Contribution Methodology, et al. (Report and Order and Notice of Proposed Rulemaking)*, WC Docket No. 06-122, et al., FCC 06-94, released June 27, 2006, at ¶37 (justifying the imposition of USF contribution obligations on interconnected VoIP providers in the interest of “competitive neutrality”).